

REMARKS

In the Final Office Action mailed October 6, 2009, claims 1, 2, 9-21, 23-39 and 55-58 were pending. Claims 23 and 24 were withdrawn from consideration, and claims 1, 2, 9-11, 16-21, 25-39 and 55-57 were rejected. Claims 12-15 and 58 were objected to but indicated to be allowable if rewritten in independent form incorporating the base claim and any intervening claims. Reconsideration of the present application including claims 1, 2, 9-21, 23-39 and 55-58 is respectfully requested.

Claim 25 was objected to for including an improper status identifier. Claim 25 along with the other claims are listed above with proper status identifiers. Withdrawal of the objection to claim 25 is respectfully requested.

Claims 1, 2, 9-11, 16-21, 25-39 and 55-57 stand rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 2,699,774 to Livingston. In the previous Office Action, the Examiner acknowledged that Livingston does not “explicitly recite that the device may have a configuration wherein each of the members have a curved configuration along a longitudinal axis that extends between a leading end and a trailing end of the device.” On page 4 of the Final Office Action, the Examiner provides a reproduction of Fig. 6 and asserts that the inner and outer members form an arc along a length of the device as indicated by the bold lines drawn by the Examiner on the Fig. 6 shown in the Final Office Action.

Claim 1 recites, among other features, “an elongated stabilization device including an elongated outer member and an elongated inner member movably received in said outer member, said inner and outer members each including a curved configuration along a longitudinal axis that extends along a length of said stabilization device between a leading end and an opposite trailing end of said stabilization device, said stabilization device further maintaining said curved configuration when in a collapsed insertion configuration and an expanded engagement configuration, wherein said curved configuration of each of said inner and outer members forms an arc along a length of said stabilization device and said arc and said longitudinal axis are co-linear along said length....”

Livingston does not disclose or teach these features associate with the inner and outer members. Livingston discloses that rod 37 is linear when shell 19 is collapsed and when shell 19 is enlarged. The portion of the inner member of Livingston asserted to include the curved configuration is not curved nor is it configured in the manner recited in claim 1. Rather, this

portion of the inner member, as shown in Fig. 6 of Livingston, includes a threaded section and a frusto-conical section extending from the threaded section. The threaded and frusto-conical sections of rod 37 are not curved to form an arc, and are linear along the longitudinal axis of rod 37. Furthermore, even if these sections were considered to form an arc as shown in the Final Office Action, this “arc” is not co-linear with the longitudinal axis of rod 37. Therefore, withdrawal of the rejection of claim 1 is respectfully requested.

Pending claims 2, 9-11, 16-21, and 57 depending from claim 1 distinguish Livingston at least for the reasons claim 1 does. Withdrawal of the rejection of claims 2, 9-11, 16-21, and 57 depending from claim 1 is respectfully requested.

Livingston also does not disclose independent claim 25. Claim 25 recites, among other features, “wherein said inner member and said outer member each include a curved configuration along said longitudinal axis that extends along said length of said stabilization device between said leading end and said opposite trailing end of said stabilization device, and in said curved configuration each of said inner member and said outer member forms an arc that is co-linear with said longitudinal axis along said length of said stabilization device.” As discussed above with respect to claim 1, Livingston fails to disclose or teach these features of the inner and outer member. Thus, claim 25 is allowable and withdrawal of the rejection thereof is respectfully requested.

Pending claims 26-39 and 55-56 depending from claim 25 distinguish Livingston at least for the reasons claim 25 does. Furthermore, the basis for rejecting claims 30 and 56 is not clear. Claims 12 and 58 were indicated to be allowable in the Final Office Action, but claims 30 and 56 are directed to features similar to those in claims 12 and 58 for which the Office Action fails to provide any prior art teaching or disclosure. Therefore, a *prima facie* case for the rejection of claims 30 and 56 has not been established, and withdrawal of the rejection of these claims is respectfully requested.

Reconsideration of the present application including claims 1, 2, 9-21, 23-39 and 55-58 is respectfully requested. The application is believed in condition for allowance, and a Notice of Allowance is hereby solicited.

The Examiner is welcome to contact the undersigned to resolve any outstanding issues with respect to the present application.

Respectfully submitted:

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